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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,176	03/12/2004	Anne Farbrot	01898-213	8607

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EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NT

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/800,176	FARBROT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael G. Bogart	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 September 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections – 35 USC § 103*

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 1-4, 6-12, 14-16 and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Roe *et al.* (US 5,635,191 A; hereinafter “Roe”) in view of Lin *et al.* (US 6,168,782 B1; hereinafter “Lin”).

Regarding claim 1, Roe, teaches an absorbent article (50) having a topsheet (520) having a polysiloxane gel/lotion/emollient that functions as a carrier for an additive such as a pharmaceutical agent or odor inhibitor (see abstract; col. 18, lines 30-40).

Roe does not disclose expressly the specific cross-linked three dimension structure or hydrophobic substance.

Lin teaches cross-linked three dimensional gelled networks of polysiloxane, an active ingredient such as a vitamin, and a hydrophobic substance (oil). The combined composition is useful in personal, health care applications and personal hygiene. The silicone gel chemically bonds to the active ingredient which provides an avenue for entrapping vitamins personal care products and for controlling the release of active ingredient in delivery systems (abstract)(col. 1, lines 36-46; col. 3, lines 5-8).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to replace the polysiloxane emollient of Roe with the elastomeric silicone of Lin in order to provide an effective active ingredient and oil retention and delivery mechanism.

Regarding claims 2-4, 9 and 10, mere changes in the relative dimensions of elements is not sufficient to patentably distinguish an invention over the prior art. See *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Regarding claim 6, Lin teaches that the active ingredient can be an odor inhibitor (col. 8, lines 37-46).

Regarding claim 7, Lin teaches that the additive also constitutes an agent for swelling the three-dimensional network (col. 3, 5-8).

Regarding claims 8 and 11, Lin teaches that the components of the silicone elastomer have a cross-linked structure (abstract). This would inherently produce a net or latticed structure.

Regarding claim 12, Lin teaches that release of the additive by the silicone gel is activated by diffusion, water or shearing forces (col. 1, lines 36-46; col. 3, lines 5-8).

Regarding claim 14, Lin teaches a glue ( $\alpha,\omega$ -unsaturated hydrocarbon/catalyst) mixed with the polysiloxane (abstract).

Regarding claim 15, Roe teaches that the gel is mixed with the surface layer (520).

Regarding claims 16, Roe teaches a method of providing an additive to an absorbent article such as an incontinence device, including the steps of providing a polysiloxane gel to an absorbent article such as a diaper (col. 1, lines 7-15; col. 18, line 30-col. 20, line 11).

Regarding claim 18, Roe teaches an incontinence device (diaper).

Claims 5 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Roe and Lin as applied to claims 1-4, 6-12, 14-16 and 18 above, and further in view of Runeman *et al.* (US 6,187,990 B1; hereinafter "Runeman").

Roe and Lin do not teach lactobacilli as an additive.

Runeman teaches an absorbent article that uses lactobacilli as an additive to prevent unpleasant odors (col. 4, lines 14-35).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to select the lactobacilli additive of Runeman in the absorbent article of Roe and Lin in order to provide an effective odor reducing agent.

Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Roe and Lin as applied to claims 1-4, 6-12, 14-16 and 18 above, and further in view of Muckenfuhs *et al.* (US 4,934,535; hereinafter "Muckenfuhs").

Roe and Lin do not teach a detachable protective layer.

Muckenfuhs teaches a package/covering (10) for a diaper.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to employ the package of Muckenfuhs to contain the diaper of Roe and Lin for retail sale.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

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In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michael Bogart  
27 November 2006

TATYANA ZALUKAEVA  
SUPERVISOR, EXAMINER

